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Wednesday, 15 May, 1946

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INTERNATIONAL MILITARY TRIBUNAL  
FOR THE FAR EAST  
Court House of the Tribunal  
War Ministry Building  
Tokyo, Japan

The Tribunal met, pursuant to adjournment,  
at 0930.

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Appearances:

For the Tribunal, same as before.

For the Prosecution Section, same as before with  
the addition of: MR. JUSTICE W. G. F. BORGERHOFF MULDER,  
Associate Counsel, acting on behalf of the Kingdom of  
the Netherlands; and COLONEL S. Y. ROSENBLITT, Assist-  
ant to the Associate Counsel acting on behalf of the  
Union of Soviet Socialist Republics.

For the Defense Section, same as before.

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(English to Japanese and Japanese  
to English interpretation was made by OKA,  
Takashi of statements from the floor, and  
English to Japanese interpretation was made  
by MASUTANI, Hideo of statements by the  
President, Hidekazu Hayashi acting as Monitor.)

1           MARSHAL OF THE COURT: The International  
2 Military Tribunal For the Far East is now resumed.

3           MR. KEENAN: If it please the Court,  
4 I have the honor to present Mr. Justice Borgerhoff  
5 Mulder, Judge in the District Court of The Hague and  
6 Justice in the Special Court for War Criminals,  
7 Associate Prosecutor from the Netherlands.

8           CAPTAIN COLEMAN: If the Tribunal please, I am  
9 Captain Coleman of American defense counsel and have been  
10 duly designated by all of the defendants to appear on  
11 their behalf.

12           The Japanese defense counsel asked me to present  
13 to the Tribunal their request that the proceedings in  
14 Court be conducted in the manner employed the day before  
15 yesterday, at which time the translation of remarks was  
16 given in Japanese, to be heard by both the defendants  
17 and their Japanese counsel. Since many of them do not  
18 understand English, they are not aware of what is taking  
19 place unless the translation is given in Japanese. Now  
20 the Japanese counsel are not in a position to make proper  
21 objections at the necessary times or otherwise function  
22 as counsel at this trial. This change is considered  
23 essential to the conduct of a fair trial. The defense,  
24 therefore, requests that the proceeding you followed  
25 yesterday be discontinued and the former procedure resumed.

1 It is my understanding that the prosecution has no  
2 objection to the granting of this request and that  
3 it is likewise agreeable to the Tribunal's translation  
4 officer.

5 Captain Kleiman will present this morning's  
6 motion, and he has prepared his remarks in short sen-  
7 tences that can readily be translated as given.

8 THE PRESIDENT: The procedure followed the  
9 day before yesterday and on preceding days would have  
10 been followed yesterday but for the fact that the de-  
11 fense counsel concerned, having been briefed rather  
12 late, were unable to give their addresses and arguments  
13 to the translators in order to produce a satisfactory  
14 translation in time, as it was given yesterday.

15 Of course, we shall revert to the procedure  
16 of the day before yesterday as soon as that is possible.  
17 But, we also accede to the request of Captain Coleman  
18 who, we understand, now represents all accused, to have  
19 the short sentences translated sentence by sentence.

20 Captain Coleman, we have a letter, I suppose  
21 you would call it, addressed to us, signed by all  
22 accused and, as far as we can judge, by all accused's  
23 counsel, appointing you to be representative of all  
24 accused, jointly and separately. Would you make a formal  
25 announcement to that effect so it may go into the record.

1           CAPTAIN COLEMAN: If the Court please, there  
2 was filed with the General Secretary of the Tribunal  
3 this morning the written designation, signed by all the  
4 accused and by their counsel, appointing me their Chief  
5 American Counsel, to represent them jointly and separately.  
6 This was filed as required by the Charter, and I accept  
7 the responsibility.

8           THE PRESIDENT: That makes your position  
9 perfectly clear now.

10           Captain Kleiman.

11           CAPTAIN KLEIMAN: May it please the Tribunal,  
12 this motion is made on behalf of the defendant, Kiichiro  
13 HIRANUMA and of four other defendants. We deny that this  
14 Tribunal has jurisdiction over the offenses alleged or  
15 over these defendants to try the crimes alleged in this  
16 Indictment.

17           THE PRESIDENT: You do not have to --

18                   (Whereupon, the interpreter interrupted  
19 to interpret the statement by Captain Kleiman.)

20                   (Addressing the interpreter): Go ahead.

21           The only motion on the paper today is the motion  
22 for particulars.

23           CAPTAIN KLEIMAN: Sir, I wish to point something  
24 else out. I think you will understand. May I continue?  
25 We also denied that the Indictment and the



1 counts allege any crime known under international law.  
2 However, we will assume these facts only for the purpose  
3 of this motion.

4 We object against this Indictment and its  
5 counts. We move that the Tribunal order the prosecution  
6 to furnish these defendants a bill of particulars con-  
7 cerning each offense alleged. This motion is made on  
8 the ground that the Indictment and the counts do not, in  
9 simple language, plainly, concisely, definitely, and  
10 adequately state the essential facts constituting each  
11 offense charged. The Indictment and the counts are in-  
12 definite in their allegations. They state not facts, but  
13 conclusions. They present not simple allegations of the  
14 essential elements of the alleged crimes, but what is a  
15 matter of evidence. They contain matters irrelevant to  
16 the offenses alleged. The legal requirement of a clear,  
17 understandable statement of the crime charged, like other  
18 legal precepts, was instituted for the protection of the  
19 oppressed. These legal precepts go back to the days of  
20 the Magna Charta. Their purpose is to protect those  
21 charged with crime, to insure justice at their trial.  
22 Justice goes to the heart of what the Allies fought for  
23 in this war.

24 Section Four of Appendix D of this Indictment  
25 states that Japanese trials of prisoners of war were not

1 fairly conducted. There have been accusations that those  
2 trials, German, and Italian trials have been farces,  
3 trials in name only. It has been decided that this will  
4 not be such a trial. Legal precedent cannot so be es-  
5 tablished. Thus, it has been stated that the trial of  
6 these defendants will be held in accordance with Anglo-  
7 American principles of fairness. In accordance with such  
8 principles, the President of this Court has announced  
9 that the prosecution has the burden of establishing the  
10 guilt of these defendants beyond a reasonable doubt.  
11 In accordance with these principles, following the pro-  
12 visions of the Magna Charta and of the Fifth and  
13 Fourteenth Amendments of the Constitution of the United  
14 States, an Indictment has been filed herein. In accord-  
15 ance with these principles, Article 9 of this Tribunal's  
16 Charter provides as follows:

17 "ARTICLE 9. Procedure for Fair Trial. In  
18 order to insure fair trial for the accused the follow-  
19 ing procedure shall be followed:

20 "a. Indictment. The indictment shall con-  
21 sist of a plain, concise, and adequate statement of  
22 each offense charged. Each accused shall be furnished,  
23 in adequate time for defense, a copy of the indictment,  
24 including any amendment, and of this Charter, in a  
25 language understood by the accused."

1 I beg the Tribunal's indulgence to allow me  
2 to cite Anglo-American principles concerning the nature  
3 and purpose of an indictment.

4 What is the nature of an indictment? It is an  
5 accusation. Its function is to charge the crime and to  
6 clearly inform the defendant of the offense alleged  
7 against him so that he may understand why he is charged,  
8 so that he may be able to prepare his defense, so that he  
9 may be able to recall specific instances and to prepare  
10 himself for the cross-examination of his accusers, so  
11 that he may know which specific witnesses, documents,  
12 or other means of evidence he must seek in order to pre-  
13 sent the truth before his triers. In other words, so  
14 that he may --

15 THE PRESIDENT: Captain Kleiman, there is no  
16 need to shout.

17 CAPTAIN KLEIMAN: Oh, excuse me, I am very  
18 sorry, sir. Thank you very much.

19 In other words, so that he may prepare for  
20 trial.

21 The Indictment and the counts, like the charges  
22 and specifications of a court martial action, must be  
23 based on facts, documents and legal evidence, not on con-  
24 clusions or opinions. The Indictment and the counts,  
25 like the charge and specification, must be in simple,



1 concise language and state definitely and adequately  
2 facts constituting the essential elements of each  
3 offense charged. Each offense must be charged by a  
4 separate count or a separate specification. Each  
5 separate offense must state a specific statutory or  
6 other legal provision that the defendant is alleged to  
7 have violated. One count or one specification must not  
8 allege more than one offense.

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9 This Indictment and the counts accuse these  
10 defendants of various criminal offenses. Japan is not  
11 indicted. Japan is not charged with these crimes. The  
12 title of the Indictment names these defendants indi-  
13 vidually. The heading of the Indictment states that  
14 these defendants committed the various alleged crimes.  
15 The headings of Groups One, Two and Three allege that  
16 these defendants are individually responsible.

17 Let us examine the Indictment to determine  
18 whether it or its counts, in simple, concise, under-  
19 standable language, particularly and adequately allege  
20 the essential elements of each offense charged.

21 In charging any crime the following must  
22 be alleged: the name of the accused, a statement of  
23 when the offense was committed, a statement of how or  
24 in what manner the offense was committed, a statement  
25 that the offense was in violation of a particular



1 statutory or other legal provision which makes the  
2 offense a crime; where criminal intent is an essential  
3 element of the crime, a statement that the defendant  
4 acted with an intent to commit a crime; where the  
5 gist of the crime consists in the unlawfulness of the  
6 means employed in committing this crime, these means  
7 must be set forth.

8           The heading of the Indictment alleges,  
9 among many other allegations, that these defendants  
10 entered into a conspiracy between themselves and  
11 with rulers of other countries; the main object of  
12 this conspiracy was to secure the domination of the  
13 rest of the world. What is a conspiracy? It is a  
14 confederation to effect an illegal object by legal  
15 means or a legal object by illegal means, and it is a  
16 misdemeanor at common law.

17           What must be alleged in stating this offense?  
18 The date when this conspiracy was agreed upon, the  
19 place where it was agreed upon, the specific persons  
20 with whom the accused conspired, the specific criminal  
21 object of the conspiracy, the joint criminal intent,  
22 the unlawful means used in effectuating the conspiracy,  
23 the specific statutory or other legal provision  
24 violated.

25           Let us look at the ordinary manner of

1 expressing a charge and specification thereunder.

2 Charge 1: Violation of the 96th Article of War.

3 Specification: In that John Wilson Jones, a private  
4 in the Army of the United States, at Yucatah County,  
5 in the State of Georgia, in the City of Atlanta, on  
6 or about the 15th day of May, 1945, agreed and con-  
7 spired with Harold Johnson and Frank Wilson to defraud  
8 the United States by obtaining the allowance of a  
9 false and fraudulent claim against the United States  
10 in the amount of fifty dollars for supplies alleged  
11 to have been furnished to the United States by Harold  
12 Wilson Jones, which claim was false and fraudulent in  
13 that (blank for particular statement), and was then  
14 known by the said John Wilson Jones to be false and  
15 fraudulent.

16 Let us examine the ordinary, simple manner  
17 of stating an indictment for murder, inasmuch as  
18 murder is one of the offenses charged by this Indict-  
19 ment.

20 "United States of America versus John Doe.  
21 Violation of United States Code Section 451. The Grand  
22 Jury charges: On or about the 6th day of January,  
23 1941, at New York City, in the Southern District of  
24 New York, and on land acquired for the use of the  
25 United States and under the exclusive jurisdiction of

1 the United States, John Doe, with premeditation, shot  
2 and murdered John Roe."

3 Thus, indictments and charges, as we  
4 American attorneys have known them in the past, have  
5 simply stated the essential elements of the offenses  
6 charged.

7 Had civilized nations the courage and the  
8 honest desire in the past to live peaceably with each  
9 other and to renounce war as a crime, had they honest-  
10 ly incorporated their desire in any particular pro-  
11 vision of any covenant or convention, had this pro-  
12 vision been accepted by the common consent of civilized  
13 nations, this Indictment and the counts thereof would  
14 have stated more simply the alleged facts. Had there  
15 been an Article of the League of Nations Covenant which  
16 stated that war is a crime, the Indictment might have  
17 read thusly:

18 "United Nations versus (specific defendants).  
19 Violation of the 12th Article of the League of Nations  
20 Covenant. The United Nations charge these defendants  
21 (specifying who they are) on or about the 10th day of  
22 September, 1932, at (a particular city), of (a partic-  
23 ular country), did conspire with persons whose names  
24 are specifically mentioned therein for the purpose of  
25 waging aggressive war in violation of international



1 law."

2           However, we have never had such a provision  
3 in any treaty, in any convention, in any international  
4 covenant.

5           MR. COMYNS CARR: Mr. President, in my sub-  
6 mission, it is time to object to the continuance of  
7 this line of argument in support of what is supposed  
8 to be a motion for a bill of particulars asking in a  
9 number of paragraphs for certain specific particulars  
10 of this Indictment. We had, yesterday and the day  
11 before, elaborate arguments on the legal basis of the  
12 Indictment. No doubt it would be good for some of us  
13 to have instruction as to the manner of drawing an  
14 indictment in the legal procedure of each of the  
15 eleven countries represented on this Tribunal; but, in  
16 my submission, a motion for a bill of particulars is  
17 not the occasion for either of those forms of discus-  
18 sion, and I ask that learned counsel be restricted to  
19 the subject matter of this motion.

20           THE PRESIDENT: Most of what Captain Kleiman  
21 said has been unhelpful to the Members of the Tribunal.  
22 We are anxious to see in what way the particulars al-  
23 ready appearing in the Indictment can be supplemented.  
24 So far, Captain Kleiman has not shown us how they can  
25 be. He may yet be able to do so. If this matter had

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1 been taken to Chambers, perhaps we would not have  
2 heard that which has fallen from the lips of Captain  
3 Kleiman.

4 MR. COMYNS CARR: May I add, the prosecution  
5 is most anxious to assist in respect of giving any  
6 further information or aid to the defense, whose dif-  
7 ficulties we fully realize, in any legitimate manner  
8 to enable them to prepare their defense. But we can-  
9 not accede to the motion in its present form and  
10 reasons supporting it in its present form. If the  
11 suggestion which you have just made, sir, were adopted  
12 and the matter discussed in detail in Chambers, we  
13 should be most anxious to give any assistance in our  
14 power.

15 THE PRESIDENT: The Court is of the opinion  
16 that this matter can be handled most effectively and  
17 most expeditiously in Chambers, and we will adjourn to  
18 Chambers accordingly. The Court will stand recessed.

19 (Whereupon, at 1033, a recess  
20 was taken until 1045, after which the pro-  
21 ceedings were resumed as follows:)

22 MARSHAL OF THE COURT: May I have the atten-  
23 tion of all persons in the room, please. As Marshal  
24 of the Court, I have been directed by the President of  
25 the Tribunal to announce for the record that the present

1 session stands adjourned. There will be a reconven-  
2 tion at the direction of the President for the next  
3 session of the International Military Tribunal for  
4 the Far East.

5 Spectators and personnel presently in the  
6 room will please remain seated until the accused leave  
7 the dock.

8 (Whereupon, at 1048, an adjourn-  
9 ment was taken.)

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